

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ROBBIN L. BANISTER,

Plaintiff,

vs.

No. CV 21-00177 KG/JHR

MRS. TRIVO,  
MRS. CALAWAY,  
MS. URBINA,

Defendants.

**ORDER DENYING LEAVE TO PROCEED *IN FORMA***  
**PAUPERIS UNDER 28 U.S.C. § 1915 AND ORDER TO SHOW CAUSE**

THIS MATTER is before the Court on the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 2) and the Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 4) filed by Plaintiff Robbin L. Banister. The Court will deny Plaintiff's Motion and Application and will order Plaintiff to pay the full \$402 filing fee within 30 days of entry of this Memorandum Opinion and Order or show cause why the payment should be excused.

Plaintiff, Robbin L. Banister, filed her Prisoner's Civil Rights Complaint under 42 U.S.C. § 1983 on February 26, 2021. (Doc. 1). Plaintiff did not pay the \$402.00 filing fee. Plaintiff did submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on February 26, 2021. (Doc. 2). However, the Prisoner's Motion was not signed, did not contain necessary financial information, and did not include a certified copy of Plaintiff's six-month inmate account statement. (Doc. 2). On July 8, 2021, the Court ordered Plaintiff to cure these deficiencies in her filing within 30 days by submitting a signed application to proceed *in forma*

*pauperis* in the form required by § 1915(a), including a certified copy of Plaintiff's six-month inmate account statement. (Doc. 3). The Court also sent Plaintiff the forms and instructions for submitting an application under § 1915. (Doc. 3) at 2. On August 5, 2021, Plaintiff submitted the form Application to Proceed supplied by the Court. (Doc. 4). However, the Application is still unsigned and does not include the required six-month inmate account statement.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Section 1915(a) provides that the Court may authorize commencement of a civil case without prepayment of fees:

by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense, or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 1915(a). The form application sent to Plaintiff by the Court with the July 8, 2021 Order contains the affidavit required by § 1915(a). However, the affidavit is not signed by the Plaintiff. (Doc. 4 at 1). Without the affidavit required by § 1915(a), the Court may not authorize Plaintiff to proceed with this action without prepaying the filing fee.

Similarly, § 1915(a)(2) states that "a prisoner seeking to bring a civil action. . .shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2). The language of the statute is mandatory, and the Court may not allow Plaintiff to proceed *in forma pauperis* absent the required account statement.

Neither the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 2) nor the Application to Proceed in District Court Without Prepaying Fees or Costs

(Doc. 4) filed by Plaintiff Robbin Banister comply with the requirements of § 1915 or with the Court's July 8, 2021 Order. Therefore, the Court will deny Plaintiff Banister leave to proceed *in forma pauperis* under 28 U.S.C. § 1915 and will order Plaintiff to either pay the full \$402 filing fee or show cause why the payment of the fee should be excused within 30 days after entry of this Order. Failure to pay the fee or show cause as required by this Order may result in dismissal of this case without further notice under Fed. R. Civ. P. 41(b).

IT IS ORDERED

1. the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 2) and the Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 4) filed by Plaintiff Robbin L. Banister are DENIED; and
2. Plaintiff Robbin L. Banister is ordered to pay the \$402 filing fee or show cause why the payment should be excused within 30 days after entry of this Order.

  
UNITED STATES DISTRICT JUDGE